

1 HONORABLE RICHARD A. JONES
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 THURSTON MYERS,
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11 Plaintiff,

12 v.
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14 SERGEANT THOMAS J. BROOKS,
15 SERGEANT JEFFREY MASON, JOHN &
16 JANE DOES 1 – 34; and the CITY OF
17 LYNNWOOD, a municipal corporation,
18 Defendants.
19

Case No. 2:18-cv-01043-RAJ

**ORDER GRANTING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

20 **I. INTRODUCTION**

21 This matter is before the Court on Defendants' motion for summary judgment
22 ("Motion"). Dkt. # 26. For the reasons below, the Court **GRANTS** the Motion.

23 **II. BACKGROUND**

24 Plaintiff Thurston Myers is a Lynnwood, Washington resident who brings claims
25 against the City of Lynnwood and two members of the Lynnwood Police Department,
26 Sergeant Thomas J. Brooks and Detective Jeffrey Mason. Dkt. # 32-1 at 4. At the time of
27 the events underlying the Complaint, Plaintiff claims to have had medical authorization to
28 grow and possess marijuana at his property under former Washington statute RCW
69.51A.085(d). Subject to certain conditions, qualifying patients under the statute could
create and participate in "collective gardens" to produce, process, transport, and deliver
marijuana for medical use. A collective garden could contain no more than ten patients at

1 any time; could contain not more than fifteen plants per patient up to a total of forty-five
2 plants; and could not contain more than twenty-four ounces of useable marijuana per
3 patient up to a total of seventy-two ounces of useable marijuana. RCW 69.51A.085(d) (eff.
4 through July 1, 2016).

5 On July 29, 2014, a Snohomish County judge found probable cause that the crime
6 of unlawful manufacturing of a controlled substance was occurring at Plaintiff's residence
7 and issued a warrant. Dkt. # 29-1. The next day, detectives with the South Snohomish
8 County Narcotics Task Force (the "Task Force") served the warrant on Plaintiff and
9 confiscated marijuana and other property in accordance with the warrant. Dkt. # 29-2. The
10 Task Force located a growing operation in what appeared to be shipping containers,
11 although Plaintiff refers to them as "container buildings." *See* Dkt. # 33. Plaintiff told the
12 Task Force that he was authorized to grow and keep a "collective garden" on his property.
13 Dkt. # 29-2 at 3. Defendant Mason informed Plaintiff that there were only three people
14 with valid medical authorization at the residence, that each card hold could possess fifteen
15 marijuana plants, and that the remainder would be seized. *Id.* The Task Force seized
16 approximately 395 marijuana plants from the shipping containers. *Id.* The Snohomish
17 County Prosecuting Attorney's Office subsequently charged Plaintiff with the crime of
18 manufacturing a controlled substance. Dkt. # 31-1.

19 Approximately one year later, Lynnwood Detective Paul Bryan applied for a search
20 warrant for Plaintiff's residence. The affidavit that he filed in support detailed facts of an
21 on-going investigation into the marijuana grow on Plaintiff's property. Of note, Bryan
22 detailed Plaintiff's past history of unlawful marijuana growing, electrical records for
23 Plaintiff's property showing excessive power consumption consistent with an unlawful
24 marijuana growing operation, knowledge of fans and humming noises coming from
25 Plaintiff's shipping containers, and complaints from neighbors about the smell of
26 marijuana coming from Plaintiff's property. Dkt. # 28-1 at 6-8. On July 21, 2015, a
27 Snohomish County judge found probable cause that the crime of unlawful manufacturing

1 of a controlled substance was occurring at Plaintiff's residence and authorized a search of
2 Plaintiff's "two-story split entry wood sided residence" and "shipping containers" located
3 on the east side of the residence. Dkt. # 29-1. The warrant authorized the seizure of "[a]ll
4 growing marijuana plants or those in excess of the medical cannabis provisions if a valid
5 medical authorization exists"; it also authorized the seizure of "marijuana growing
6 equipment," "drug paraphernalia" and "any other items used to grow marijuana," unless
7 valid medical authorization existed. Dkt. # 29-1.

8 On July 22, 2015, Defendants executed the warrant and provided a copy to Plaintiff.
9 Dkt. # 28-2. As before, Plaintiff stated that he was entitled to grow a "collective garden"
10 on his property, but this time claimed to have a provider license which permitted him to
11 grow for multiple people at a time. *Id.* at 5. Defendants seized over 200 marijuana plants,
12 shake marijuana totaling 275.2 pounds, growing equipment, lights, marijuana license
13 documentation, and the two shipping containers. *Id.* Defendants left 45 marijuana plants
14 which they believed Plaintiff was authorized to keep per state law. *Id.* Defendant Brooks
15 took custody of Plaintiff and transported him to jail. Once at the jail, Plaintiff received a
16 Notice of Seizure and Intended Forfeiture, which advised him of his right to a hearing
17 regarding the seized property. Dkt. # 28-2; Dkt. # 31-2 at 41.

18 Plaintiff claims that the seizure of the containers, or his "container buildings," as
19 well as his arrest violate the Fourth and Fourteenth Amendments. Dkt. # 1. Plaintiff also
20 brings a claim against the City of Lynnwood (the "City"), alleging that municipal policy
21 makers exhibited deliberate indifference to his constitutional rights and failed to provide
22 adequate training on "collective garden" marijuana laws. *Id.*

23 III. LEGAL STANDARD

24 Summary judgment is appropriate if there is no genuine dispute as to any material
25 fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a).
26 The moving party bears the initial burden of demonstrating the absence of a genuine issue
27 of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Where the moving

1 party will have the burden of proof at trial, it must affirmatively demonstrate that no
2 reasonable trier of fact could find other than for the moving party. *Soremekun v. Thrifty*
3 *Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007). On an issue where the nonmoving party
4 will bear the burden of proof at trial, the moving party can prevail merely by pointing out
5 to the district court that there is an absence of evidence to support the non-moving party's
6 case. *Celotex Corp.*, 477 U.S. at 325. If the moving party meets the initial burden, the
7 opposing party must set forth specific facts showing that there is a genuine issue of fact for
8 trial in order to defeat the motion. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250
9 (1986). The court must view the evidence in the light most favorable to the nonmoving
10 party and draw all reasonable inferences in that party's favor. *Reeves v. Sanderson*
11 *Plumbing Prods.*, 530 U.S. 133, 150-51 (2000).

12 However, the court need not, and will not, "scour the record in search of a genuine
13 issue of triable fact." *Keenan v. Allan*, 91 F.3d 1275, 1279 (9th Cir. 1996); *see also, White*
14 *v. McDonnel-Douglas Corp.*, 904 F.2d 456, 458 (8th Cir. 1990) (the court need not
15 "speculate on which portion of the record the nonmoving party relies, nor is it obliged to
16 wade through and search the entire record for some specific facts that might support the
17 nonmoving party's claim"). The opposing party must present significant and probative
18 evidence to support its claim or defense. *Intel Corp. v. Hartford Accident & Indem. Co.*,
19 952 F.2d 1551, 1558 (9th Cir. 1991). Uncorroborated allegations and "self-serving
20 testimony" will not create a genuine issue of material fact. *Villiarimo v. Aloha Island Air,*
21 *Inc.*, 281 F.3d 1054, 1061 (9th Cir. 2002); *T.W. Elec. Serv. v. Pac Elec. Contractors Ass'n*,
22 809 F.2d 626, 630 (9th Cir. 1987).

23 **IV. DISCUSSION**

24 Plaintiff claims that Defendants breached the Fourth and Fourteenth Amendments
25 by unlawfully seizing the containers, or "container buildings" in his backyard as well as all
26 the contents connected to and contained within them. Dkt. # 1 at 9. In support of his claim,
27 Plaintiff argues that the "container buildings" are real property under Washington law and

1 that the search warrant relied upon did not authorize Defendants to seize real property.
2 Dkt. # 33 at 7-8.

3 **I. Seizure of Plaintiff's Property**

4 **A. Fourth Amendment Analysis**

5 The Fourth Amendment, made applicable to the states by the Fourteenth
6 Amendment, prevents “general, exploratory searches and indiscriminate rummaging
7 through a person’s belongings.” *United States v. Mann*, 389 F.3d 869, 877 (9th Cir. 2004).
8 Accordingly, the Fourth Amendment requires law enforcement officers to obtain a warrant
9 that describes with particularity the place to be searched and the person or things to be
10 seized. *United States v. Spilotro*, 800 F.2d 959, 963 (9th Cir. 1986). “While a search
11 warrant must describe items to be seized with particularity sufficient to prevent a general,
12 exploratory rummaging in a person’s belongings, it need only be reasonably specific, rather
13 than elaborately detailed.” *United States v. Rude*, 88 F.3d 1538, 1551 (9th Cir. 1996)
14 (internal quotation marks and citations omitted). When law enforcement officers act
15 unreasonably when executing a search warrant, they violate the Fourth Amendment. *San*
16 *Jose Charter of Hells Angels Motorcycle Club v. City of San Jose*, 402 F.3d 962, 974–75
17 (9th Cir. 2005) (explaining that an officer generally does not have the power to seize
18 anything not specified in the warrant, but retains discretion over the execution of the
19 search).

20 The warrant here found probable cause of unlawful manufacturing of a controlled
21 substance and authorized a search of Plaintiff’s residence. Dkt. # 31-8 (describing the
22 premises as a tan-colored “two-story split entry wood sided residence” and “shipping
23 containers” located on the east side of the residence). The warrant also authorized seizure
24 of “[a]ll growing marijuana plants or those in excess of the medical cannabis provisions if
25 a valid medical authorization exists”; it also authorized the seizure of “marijuana growing
26 equipment,” “drug paraphernalia” and “any other items used to grow marijuana,” unless
27 valid medical authorization existed. Dkt. # 29-1. The affidavit offered in support of the
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1 warrant detailed Plaintiff's past history of unlawful marijuana growing, electrical records
 2 for Plaintiff's property showing excessive power consumption consistent with an unlawful
 3 marijuana growing operation, knowledge of fans and humming noises coming from
 4 Plaintiff's shipping containers, and complaints regarding the smell of marijuana coming
 5 from Plaintiff's property. Dkt. # 28-1 at 6-8. The Court finds that the search warrant
 6 describes with sufficient particularity the premises to be searched and the items to be
 7 seized. *U.S. v. Mann*, 389 F.3d 869, 878 (9th Cir. 2004).

8 In finding the search warrant valid, the Court turns to Plaintiff's contention that
 9 Defendants exceeded the scope of the warrant by seizing his "container buildings." "A
 10 warranted search is unreasonable if it exceeds in scope or intensity the terms of the
 11 warrant." *United States v. Becker*, 929 F.2d 442, 446 (9th Cir. 1991) (quoting *United States*
 12 *v. Penn*, 647 F.2d 876, 882 n.7 (9th Cir. 1980) (en banc)). Plaintiff claims that he was
 13 legally operating a collective garden, pursuant to RCW 69.51A.210 when Defendants
 14 executed the warrant at his residence in July 2015. Dkt. # 33 at 9. This could not be the
 15 case, however, as RCW 69.51A.210 did not become effective until July 1, 2016. The
 16 Washington law in effect at the time, RCW 69.51A.085, states that "[a] collective garden
 17 may contain no more than fifteen plants per patient up to a total of forty-five plants."¹ It
 18 is undisputed that Defendants seized 275.2 pounds of "shake" marijuana and over 200
 19 marijuana plants—well beyond what would have been permitted for a legal "collective
 20 garden" under Washington law. Defendants did not act unreasonably in executing the
 21 warrant by seizing the "containers buildings," which, as a matter of Washington law, may
 22 constitute drug paraphernalia. *See Smith v. Mount*, 726 P.2d 474, 478 (Wash. App. 1986)
 23 (explaining that a 10 by 48 foot building structure with no windows, but equipped with
 24 built-in fans, humidifiers and artificial growing lights was "drug paraphernalia" despite
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26 ¹ To the extent, Plaintiff attempts to create disputed issues via its expert witness, those
 27 arguments will not be considered. The Court **GRANTS** Defendants' motion to strike for
 28 the reasons stated therein. *See* Dkt. # 36.

1 being appurtenant to real property). This is true even viewing the facts in a light most
 2 reasonable to Plaintiff. *Reeves*, 530 U.S. at 150-51. Accordingly, the Court **GRANTS**
 3 Defendants' Motion as to this cause of action.

4 **B. Fourteenth Amendment Analysis**

5 To the extent Plaintiff also alleges a due process claim, that too fails as a matter of
 6 law. In *Hudson v. Palmer*, 468 U.S. 517 (1984), the United States Supreme Court held that
 7 deprivations of property by a state employee do not constitute violations of the procedural
 8 requirements of the Due Process Clause of the Fourteenth Amendment if a meaningful
 9 post-deprivation remedy for the loss is available. *Hudson*, 468 U.S. at 533. The important
 10 inquiry is not whether Plaintiff took advantage of the post-deprivation remedy, but whether
 11 the state offered such a remedy. *Parratt v. Taylor*, 451 U.S. 527 (1981). Here, even if
 12 Defendants wrongly seized Plaintiff's "shipping containers," no liability would ensue if
 13 the state offered a meaningful post-deprivation remedy. It is undisputed that the City
 14 served Plaintiff with a Notice of Seizure and Intended Forfeiture, which advised him of his
 15 right to a hearing regarding the seized property. Dkt. # 32-1. The Notice explained that
 16 Plaintiff was required to notify the City of Lynnwood Police Department by certified mail
 17 within 45 days of his claim to ownership or right to possession of the items taken, including
 18 his containers. *Id.* Because a meaningful postdeprivation remedy was provided, the Court
 19 **GRANTS** Defendants' Motion as to this cause of action.

20 **II. Seizure of Plaintiff (False Arrest)**

21 To succeed on a Section 1983 claim based on false arrest, a plaintiff must show that
 22 the defendant lacked probable cause for the arrest. *Cabrera v. City of Huntington Park*,
 23 159 F.3d 374, 380 (9th Cir. 1998). “[P]robable cause” to justify an arrest means facts and
 24 circumstances within the officer’s knowledge that are sufficient to warrant a prudent
 25 person, or one of reasonable caution, in believing . . . that the suspect has committed, is
 26 committing, or is about to commit an offense.” *Michigan v. DeFillippo*, 443 U.S. 31, 37
 27 (1979). This standard is met when there is a “fair probability” that a crime has been
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1 committed. *United States v. Smith*, 790 F.2d 789, 792 (9th Cir. 1986). “Probable cause
 2 is an objective standard and the officer’s subjective intention in exercising his discretion to
 3 arrest is immaterial in judging whether his actions were reasonable for Fourth Amendment
 4 purposes.” *John v. City of El Monte*, 515 F.3d 936, 940 (9th Cir. 2008).

5 Plaintiff argues that the facts demonstrate a lack of probable cause because he was
 6 legally operating a collective garden and he claims to have provided Defendants with
 7 identification for each member of the collective gardens. Dkt. # 33. The Washington State
 8 Supreme Court has opined that the relevant state law only provides an affirmative defense
 9 for the medical use of cannabis. *State v. Reis*, 351 P.3d 127 (Wash. 2015). An affirmative
 10 defense does not defeat probable cause. *Id.*; *State v. Fry*, 228 P.3d 1 (2010). As noted
 11 above, Defendants possessed sufficient facts to believe that Plaintiff was unlawfully
 12 manufacturing a controlled substance. Therefore, the Court **GRANTS** Defendants’
 13 Motion as to the false arrest claim.

14 III. Qualified Immunity

15 Even if a constitutional violation occurred, the officers claim that they are entitled
 16 to qualified immunity. Dkt. # 25 at 1. Government officials enjoy qualified immunity
 17 from civil damages unless their conduct violates “clearly established statutory or
 18 constitutional rights of which a reasonable person would have known.” *Harlow v.*
 19 *Fitzgerald*, 457 U.S. 800, 818 (1982). In deciding whether qualified immunity applies, the
 20 Court must determine: (1) whether the facts alleged show the defendant’s conduct violated
 21 a constitutional right; and (2) whether that right was clearly established at the time of the
 22 violation. *Pearson v. Callahan*, 555 U.S. 223, 230-32, 235-36 (2009) (courts may address
 23 either prong first depending on the circumstances in the particular case).

24 The Court agrees with the Defendants that several reasons support finding qualified
 25 immunity applies here. First, with respect to the alleged Fourth Amendment violation for
 26 seizing Plaintiff’s “container buildings,” the officers acted pursuant to a valid warrant. *See*,
 27 *e.g.*, *Barlow v. Ground*, 943 F.2d 1132, 1139 (9th Cir. 1991) (“A police officer generally

1 has qualified immunity for conducting an unconstitutional search if he is acting on the basis
2 of a facially valid warrant.”). The warrant itself authorized the seizure of “[a]ll growing
3 marijuana plants or those in excess of the medical cannabis provisions if a valid medical
4 authorization exists” as well as “marijuana growing equipment,” “drug paraphernalia” and
5 “any other items used to grow marijuana,” unless valid medical authorization existed. Dkt.
6 # 29-1. It was clear that “container buildings” served no other purpose other than to grow
7 marijuana. *See* Dkt. # 27-2. Moreover, none of the facts show that Plaintiff had a clearly
8 established federal constitutional right violated by seizure of the “container buildings.”
9 And to the extent Plaintiff claims that Defendants violated state law in seizing his
10 marijuana, he has no recourse by way of the U.S. Constitution or a federally-created statute.
11 *See Sweaney v. Ada County, Idaho*, 119 F.3d 1385 (9th Cir. 1997).

12 As for Plaintiff’s claim of false arrest, the facts demonstrate probable cause to arrest
13 Plaintiff. Having seized 275.2 pounds of “shake” marijuana and over 200 marijuana plants,
14 well beyond the “collective garden” limit, Defendants possessed sufficient facts to believe
15 that Plaintiff was unlawfully manufacturing a controlled substance. As such, there is no
16 dispute as to whether Defendants’ conduct violated his Fourth Amendment right. It did
17 not. Accordingly, the Court **GRANTS** summary judgment on Defendant Officers’ claim
18 for qualified immunity.

19 **IV. *Monell* claim**

20 A municipality can be liable under section 1983 if an official policy, custom, or
21 practice directly caused the violation of an individual’s constitutional rights. *Monell v.*
22 *Dep’t of Soc. Servs. of City of New York*, 436 U.S. 658, 694 (1978). To succeed on a *Monell*
23 claim, a plaintiff must establish that (1) the law enforcement officers acted under color of
24 law; (2) the officers’ actions deprived the plaintiff of his/her rights as afforded by the
25 Constitution; and (3) the officers acted pursuant to an official policy or longstanding
26 practice or custom. *Oviatt v. Pearce*, 954 F.2d 1470, 1474 (9th Cir. 1992). Because no
27 constitutional violation occurred, Plaintiff’s *Monell* claim fails as a matter of law. *Monell*,

1 436 U.S. at 692.

2 But even assuming a constitutional violation, Plaintiff's claim would still fail.
3 Specifically, he points to no government policy in support of a *Monell* claim. Absent a
4 formal governmental policy, a plaintiff must show a "longstanding practice or custom
5 which constitutes the standard operating procedure of the local government entity."
6 *Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir. 1996). He fails to do this as well. Instead,
7 Plaintiff argues that the Lynnwood City Council had been debating a ban on the use of
8 shipping containers as accessory building on residential lots and that Plaintiff's property
9 was specifically discussed. Dkt. # 33 at 21-22. This fails to constitute a longstanding
10 practice and otherwise ignores the valid search warrant used to search and seize Plaintiff's
11 property.

12 Plaintiff argues separately that the City is liable based on an alleged failure to
13 adequately train its officers on the differences between illegal narcotics trafficking and a
14 lawful marijuana "collective garden." *Id.* at 24. To establish *Monell* liability on a theory
15 of failure to train, a plaintiff must not only show that the training was inadequate, but that
16 the city was deliberately indifferent to individuals' constitutional rights. *See City of Canton*
17 *v. Harris*, 489 U.S. 378, 388 (1989). The fact that further training might have prevented
18 any violation is insufficient—instead, the choice not to train must be deliberate. *See id.* at
19 392. *Blankenhorn v. City of Orange*, 485 F.3d 463, 484 (9th Cir. 2007) (alteration omitted)
20 (quoting *Lee v. City of Los Angeles*, 250 F.3d 668, 681 (9th Cir. 2001)). It may be
21 evidenced where "the need for more or different training is so obvious, and the inadequacy
22 [is] so likely to result in the violation of constitutional rights." *City of Canton*, 489 U.S. at
23 390. There is nothing in the record to support this theory of liability, such as a pattern of
24 similar alleged constitutional violations or any evidence of the training received by the
25 City's police officers.

26 Lastly, Plaintiff claims municipal liability is appropriate because the City's Planning
27 Commission Director ratified a policy outlawing "container buildings" despite the fact that

1 the containers complied with State and local laws. Dkt. # 33. Liability under *Monell* may
2 follow where a policymaker approves a subordinate's unconstitutional decision and the
3 basis for it. *See Gillette v. Delmore*, 979 F.2d 1342 (9th Cir. 1992). This theory of liability
4 as applied here has no merit. Plaintiff has not shown that the City's Planning Commission
5 Director has any authority over the actions of the city's police matters. *See, e.g., Larez v.*
6 *City of Los Angeles*, 946 F.2d 630 (9th Cir. 1991) (noting evidence that chief of police was
7 final decisionmaker for city's police matters). In any case, Plaintiff's "container buildings"
8 were seized pursuant to a warrant related to unlawful manufacturing of a controlled
9 substance, not because they were banned under a City ordinance. And as stated above,
10 Defendants did not act unconstitutionally in seizing the property.

11 For the reasons stated, Plaintiff's *Monell* claim fails as a matter of law and
12 Defendants' Motion is **GRANTED** as to this cause of action.

13 **V. CONCLUSION**

14 For the reasons stated above, the Court **GRANTS** the Motion. Dkt. # 26.

15 DATED this 13th day of September, 2019.

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The Honorable Richard A. Jones
United States District Judge